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PETITION NOT PRINTED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 360 MISC.

UNITED STATES OF AMERICA, *ex rel.*
JAMES STEELE,

Petitioner,

against

J. VERNAL JACKSON, Warden of Clinton State Prison, Dannemora, New York,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

Petitioner prays for a writ of certiorari directed to the United States Circuit Court of Appeals for the Second Circuit to review an order of that Court entered on November 19, 1948, affirming an order of the United States District Court for the Northern District of New York (Brennan, J.) dated July 30, 1947, dismissing petitioner's petition for a writ of habeas corpus.

Facts

Petitioner was convicted of murder, second degree, on June 30, 1930 after a trial by jury in the New York Supreme Court, Westchester County, and was sentenced to State

prison for a term of thirty-five years to life. In his petition for a writ of habeas corpus petitioner alleged that he was convicted in violation of the due process clause of the Federal Constitution, claiming that the indictment lacked sufficient legal evidence to sustain it, that a witness for the State gave perjured testimony at the trial, and that petitioner is innocent of the crime of which he stands convicted. The United States District Court dismissed the petition on the ground that adequate remedies were available to petitioner in the courts of New York State and no exceptional circumstances were present warranting the exercise of jurisdiction by the Federal courts. The order of the District Court was affirmed by the Circuit Court of Appeals.

Prior to this application to the Federal District Court for a writ of habeas corpus, petitioner had had six writs of habeas corpus dismissed by the courts of New York State during the period from 1932 to 1944, a hearing having been held on each of such writs. In October 1946 petitioner petitioned the New York State Supreme Court, Westchester County, the Court of his conviction, for a writ of *coram nobis,* and by order dated October 24, 1946 that petition was denied. Petitioner thereupon petitioned this Court for a writ of certiorari directed to the New York State Supreme Court, Westchester County, and on December 23, 1946 this Court denied that petition (329 U. S. 796); on January 6, 1947 this Court denied a petition for a rehearing (329 U. S. 832).

ARGUMENT

Habeas corpus is not available in the Federal Courts where adequate remedies are provided for in State Courts.

New York State has given petitioner an opportunity to have his case reviewed upon *coram nobis* and petitioner availed himself of that opportunity. Upon the rejection of petitioner's contention by the State court this Court refused to review the State court's decision by writ of certiorari (329 U. S. 796). We submit that it is settled law that the use of a federal writ of habeas corpus is not available in such circumstances *(Ex Parte Hawk,* 321 U. S. 114, 118, citing *Salinger* v. *Loisel,* 265 U. S. 224, 230-2). It is only where resort to State court remedies has failed to accord a full and fair adjudication of the federal contentions raised, thus creating exceptional circumstances, that a Federal court should entertain a petition for a writ of *habeas corpus.*

New York State has provided petitioner with ample remedies whereby his contentions could be raised in the State courts, and the State courts have held adversely to him (See *Matter of Lyons* v. *Goldstein,* 290 N. Y. 19 [1943]; *Matter of Morhous* v. *Supreme Court,* 293 N. Y. 131 [1944]; *Matter of Hogan* v. *Supreme Court,* 295 N. Y. 92 [1946]). No exceptional circumstances have been shown by petitioner which would warrant Federal intervention.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated, February 8, 1949.

Respectfully submitted,

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